

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

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CHRISTENSEN SHIPYARDS, LTD.,)
a Washington Corporation,)

Plaintiff,)

vs.)

ST. PAUL FIRE AND MARINE)
INSURANCE COMPANY, a foreign)
corporation and NAVIGATORS)
INSURANCE COMPANY, a foreign)
corporation,)

Defendants.)

CASE NO. CV6641

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ST Paul objects
to Plaintiff designating
any testimony from
David Friedland because
he is under plaintiff's
control.

200 South Biscayne Boulevard
Miami, Florida
Monday, May 21, 2007
9:40 o'clock a.m.

DEPOSITION OF: DAVID K. FRIEDLAND, ESQ.

ROSENBERG & ASSOCIATES, INC.

Certified Shorthand Reporters & Videographers

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1 Deposition of DAVID K. FRIEDLAND, ESQUIRE, a
2 witness of lawful age, taken by the Defendant for the
3 purpose of discovery and for use as evidence in the
4 above-entitled cause, wherein Christensen Shipyards, Ltd.
5 is the Plaintiff and St. Paul Fire and Marine Insurance
6 Company, et al. are the Defendants, pending in the United
7 States District Court, Western District of Washington
8 pursuant to notice heretofore filed, before Cindy M.
9 Whiting, a Certified Registered Professional Reporter and
10 Notary Public in and for the State of Florida at Large, at
11 the Offices of Duane Morris, LLP, 200 South Biscayne
12 Boulevard, Miami, Miami-Dade County, Florida, on the 21st
13 day of May, 2007, commencing at 9:40 o'clock a.m.

14 -----
15 DAVID K. FRIEDLAND, ESQUIRE,

16 having been first duly sworn to tell the truth, the whole
17 truth and nothing but the truth, testified as follows:

18 DIRECT EXAMINATION

19 BY MR. CARBIN:

20 Q Mr. Friedland, good morning.

21 A Good morning.

22 Q We met off the record, my name is Jim Carbin,
23 I'm the attorney for St. Paul Fire and Marine and I want
24 to ask you some questions. If anything I ask you is
25 unclear, please tell me and I'll do my best to make the

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1 questions as clear as I can. How is that?

2 A Okay.

3 Q Would you tell us your full name, please.

4 A David Kenneth Friedland.

5 Q What is your home address?

6 A 8375 Southwest 58th Avenue in Miami.

7 MR. CARBIN: Off the record.

8 (Friedland's Exhibit 150 was marked for
9 Identification.)

10 BY MR. CARBIN:

11 Q Mr. Friedland, show you what we've marked as
12 Exhibit 150, do you recognize it to be a subpoena served
13 on your office?

14 A I believe it has my cover letter attached to it
15 as well. It appears to be a copy of one of two separate
16 subpoenas that your office delivered to my office.

17 Q And am I correct that you're appearing here
18 pursuant to subpoena?

19 A Yes.

20 Q And am I also correct that the subpoena called
21 for a production of documents from your office?

22 A It did.

23 Q And I believe that production was made.

24 A Through Christensen's counsel, yes.

25 Q Are you represented by counsel here today?

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1 A Yes.

2 Q Who is that counsel?

3 A Ms. Carr.

4 Q When did you retain her?

5 A Shortly after I learned that you wanted to take
6 my deposition.

7 Q When would that have been, approximately, as
8 best you can recall?

9 A Late last year.

10 Q What do you do for an occupation?

11 A I'm an attorney.

12 Q Where are you admitted?

13 A What states am I admitted in?

14 Q To practice law, yes.

15 A Georgia and Florida.

16 Q When were you admitted in each of those
17 jurisdictions?

18 A Georgia 1989, Florida also 1989, I believe.

19 Q Have you been practicing law continuously since
20 then, since your admission?

21 A Since January 1989, yes.

22 Q What is the nature of your practice?

23 A I am an intellectual property law attorney. I
24 am a registered patent attorney and a shareholder in a law
25 firm in Coral Gables that provides legal services solely

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1 in the area of intellectual property law.

2 Q What firm is that?

3 A Lott & Friedland.

4 Q How long have you been a member of Lott &
5 Friedland?

6 A July '94.

7 Q Have you been affiliated with Lott & Friedland
8 in Florida since July of '94?

9 A No. I've been affiliated with Lott & Friedland
10 in Florida since July '91. I became a member of the firm
11 in July '94.

12 Q You anticipated my next question. When did you
13 join Lott & Friedland?

14 A July '91.

15 Q Have you ever been sanctioned or reprimanded in
16 your handling of a professional duty?

17 A By whom?

18 Q Anyone.

19 A I've been criticized by my partners for not
20 doing something the way they wanted to do; but not
21 officially sanctioned by a Bar organization or anything
22 like that.

23 Q Or a court?

24 A Or a court.

25 Q Do you have a -- withdrawn.

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1 A Mr. and Ms. Woods and the company that owned the
2 yacht.

3 Q Yes.

4 A Okay.

5 Q What role did you play with respect to the
6 litigation by the Woods camp against Christensen?

7 A I played different roles at different periods of
8 time, so perhaps you can ask the question with a little
9 bit more detail, or if you want, I can just give you a
10 chronological narrative.

11 Q That's what I was going to ask you to do.

12 A Okay. The lawsuit was filed late October, early
13 November of '04, seeking a preliminary injunction. Case
14 Marshall contacted our firm to represent Christensen at
15 the preliminary injunction hearing; it was attended by my
16 partner and one of our associates in the first week of
17 November. Through about January --

18 Q If I could ask you, as you go through the
19 scenario - you say the TRO was attended by your client or
20 an associate in your office, who was that?

21 A Leslie Lott and, I believe, Janet Moreira,
22 M-O-R-E-I-R-A.

23 Q Thank you.

24 A I was not in attendance, because I was getting
25 married.

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1 When I returned to the office, I assumed primary
2 responsibility within our firm for the case. Sometime,
3 probably the end of November, beginning December, we filed
4 a motion to dismiss or transfer the case.

5 Q This is '04?

6 A Yes. Within the time - I don't remember if when
7 we consented to the entry of a preliminary injunction, we
8 were given a date - a specific date to respond to the
9 complaint or if we negotiated an extension with Doug
10 Baldrige's firm. But whenever our answer was due or a
11 response of pleading, we filed a motion to dismiss or
12 transfer the case to the State of Washington.

13 Q Am I correct that motion of transfer was based
14 upon the contract between Christensen and the boat
15 purchaser?

16 A I don't remember at this time. I don't remember
17 if it was based on a contract clause or convenience of
18 venue and location of documents, it - or a combination of
19 the two, I don't remember.

20 You want to go back to my narrative?

21 Q Please.

22 A Maybe late December '04, early January, February
23 of '05, Casey Marshall of Christensen hired Peterson,
24 Young Putra of Washington to be our co-counsel on the
25 case. So, from that point forward, I was - I was now,

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1 co-counsel, as opposed to sole counsel for Christensen.

2 And from - from whenever Jan Peterson and Mike Wampold and
3 their office started working on the case through the
4 settlement, we worked as co-counsel.

5 Q Were you the primary attorney at Lott &
6 Friedland throughout the litigation between Woods and
7 Christensen?

8 A Except for the very beginning when I was off
9 getting married, yes.

10 Q Who took the - withdrawn.

11 Who attended on behalf of the Christensen camp
12 the various depositions that were taken in the underlying
13 case?

14 MS. CARR: Objection, vague; broad.

15 THE WITNESS: Without giving you a number, there
16 were probably 15 deposition and there were different
17 people attending each deposition.

18 BY MR. CARBIN:

19 Q Did anyone from your office attend any of the
20 depositions?

21 A Any, yes; all, no.

22 Q Would it be fair to say that the Peterson Young
23 firm, Mike Wampold in particular, took most of the
24 depositions?

25 A No.

1 Q By your office.

2 A No.

3 Q If the case had gone to trial, who was going to
4 be the lead trial attorney for the Christensen defendant?

5 A What is a lead trial attorney?

6 Q Huh?

7 A What is the lead trial attorney?

8 Q The first chair.

9 A I'm not sure there would have been a first
10 chair. I'm not sure. I mean, the expectations that Jan,
11 Mike and I would have been at counsel table dividing the
12 labor amongst the three of us, who was going to - who was
13 going to cross-examine what witness hadn't been
14 determined. Who was going to open, who was going to close
15 hadn't been determined. So, if you want to define the
16 lead lawyer by who sits in what chair, it hadn't been
17 determined and I don't think it had even been discussed.

18 Q Had you ever heard that if the case did go to
19 trial, Jan Peterson would be the lead trial attorney for
20 the Christensen camp?

21 A No; but it wouldn't surprise me that we would
22 give Jan the most prominent role. He was the senior of
23 all of us involved and the most experienced.

24 Q What was your understanding of why Peterson
25 Young and Putra were co-counsel on a Florida pending in

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1 BY MR. CARBIN:

2 Q Were you consulted?

3 MS. CARR: Objection, vague.

4 THE WITNESS: By whom?

5 BY MR. CARBIN:

6 Q By Christensen or Mr. Marshall acting for
7 Christensen.

8 A Not that I can recall.

9 Q Who was your primary contact at Christensen?

10 A Including Casey Marshall, it would be Casey or
11 Joe Foggia, depending on what I needed and who I could
12 reach at any given time.

13 Q What was your understanding of Mr. Marshall's
14 role?

15 A It was and still is my understanding that he was
16 basically outside general counsel to Christensen.

17 Q Have you ever met anyone from the St. Paul Fire
18 and Marine Insurance Company?

19 MS. CARR: Objection, vague.

20 THE WITNESS: In person, on the phone - in
21 person, on the phone?

22 BY MR. CARBIN:

23 Q By met, I meant in person.

24 A Yes.

25 Q Who was that?

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1 A Are you talking only about this lawsuit or -- I
2 may have met St. Paul agents throughout my life. If I
3 focus on this lawsuit, I met Mr. Wade.

4 Q And you met him the day of the mediation?

5 A The morning of the mediation at the JW Marriott
6 Hotel.

7 Q Aside from Mr. Wade in connection with the
8 Christensen/Woods litigation, so we're clear, have you met
9 anybody else from St. Paul?

10 A Not that I'm aware of.

11 Q We'll talk about the mediation a bit later.

12 A Okay.

13 Q Aside from meeting Mr. Wade on the date of
14 mediation, have you ever spoken to anybody from St. Paul
15 in connection in the Woods/Christensen litigation?

16 A Yes.

17 Q Who have you spoken with?

18 A Donna Zeller and perhaps her assistants in
19 trying to speak to her.

20 MS. FOLEY: I'm sorry. I'm having difficulty
21 hearing the witness. Can you speak up a little bit,
22 please.

23 THE WITNESS: Sorry, Danielle.

24 MS. CARR: I have you pulled over as far as it
25 will pull now, maybe that will help.

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1 MS. FOLEY: Thank you.

2 BY MR. CARBIN:

3 Q How many times did you speak with Ms. Zeller?

4 A I couldn't guess.

5 Q What's your best estimate?

6 A Couldn't give you one.

7 Q You speak to her more than once?

8 A Yes.

9 Q Did you speak to her more than five times?

10 A Yes.

11 Q Did you speak to her more than ten times?

12 A Don't know.

13 Q Were those conversations, between five and ten,
14 by phone?

15 MS. CARR: Objection.

16 THE WITNESS: Never --

17 MS. CARR: I'm sorry. Objection form; misstates
18 prior testimony.

19 THE WITNESS: First of all, I never said between
20 five and ten, so you're mischaracterizing what I just
21 said. You asked me five, I said yes. You asked me
22 ten, I said I didn't know, it could be 30, for all I
23 know. I don't know how many times I spoke to her.

24 BY MR. CARBIN:

25 Q What is your best recollection of how many times

objection
Answered the

1 you did speak to her?

2 A I don't have a recollection.

3 MS. CARR: Objection, asked and answered.

4 BY MR. CARBIN:

5 Q Do you have a recollection of any of those
6 conversations?

7 A Generally, yes. Specifically, no.

8 Q When did these conversations occur, that is to
9 say, what period of time?

10 MS. CARR: Objection, lack of foundation.

11 THE WITNESS: Periodically during the course of
12 the lawsuit.

13 BY MR. CARBIN:

14 Q Was there any set interim to these periodic
15 conversations?

16 A No. We didn't have a call scheduled for the
17 first Thursday of every month or anything like that, if
18 that's what you mean.

19 Q How many of those calls did you initiate?

20 A What do you mean by initiate?

21 Q Pick up the phone and dial her number, or call
22 your secretary to pick up the phone and dial her number.

23 A I don't know. We played phone tag a lot.

24 Called her from my cell phone a couple times when I was
25 traveling, she called me a couple times. It was pretty

1 much call, leave a voice message, call back. So, if I'm
2 responding to a voicemail message, I don't necessarily
3 consider that initiating a call, I consider that calling
4 back. So, I couldn't specify who initiated the calls in
5 terms of how we actually spoke.

6 Q What do you recall speaking to Mrs. Zeller
7 about?

8 A Updates in the case.

9 Q Sorry?

10 A Updates concerning the status of the case.

11 Q How many times did you give her an update
12 concerning the status of the case?

13 A That would pretty much be the only reason I
14 would speak to her, so each time I spoke to her on the
15 phone.

16 Q What did you tell her particularly in these
17 updates?

18 A Depends what the update was.

19 Q Well I'm asking you.

20 A We filed a motion to dismiss or transfer; the
21 judge denied the motion to dismiss or transfer.

22 Q That was the second update?

23 A No. I have no specific recollection of what
24 happened when, except I know that we filed a motion to
25 dismiss, I would have told her about it. Because at that

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1 time, I was the only - we were the only law firm involved.

2 Q So I want to be clear on this.

3 MS. CARR: Wait.

4 THE WITNESS: Please don't interrupt me while
5 I'm answering your question.

6 MS. CARR: Yeah, you need to let him --

7 THE WITNESS: You've asked me questions, let me
8 finish my question. I do what you do for a living,
9 so I know that you need to let the witness answer the
10 question. If you want to interrupt me, you're not
11 going to get answers to my questions.

12 BY MR. CARBIN:

13 Q I don't want to interrupt you.

14 A Then don't.

15 Q I want the record to be clear for both of us.

16 A Okay.

17 Q So --

18 A So let me finish the answer to my question and
19 then you can ask me a follow-up question, if you like.

20 Q Go ahead.

21 A Okay. Whenever an event of substance took place
22 in the case, I would attempt to speak to Ms. Zeller and
23 give her an update. From time to time, if nothing had
24 happened for a couple months, she may have called me and
25 asked me for an update, in which case, I would say, we're

ST Paul
objects
No
question
pending

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1 still waiting on the judge to rule on the motion to
2 dismiss, or there is nothing going on. As soon as
3 anything changes, I will let you know. But matters such
4 as filing the motion to dismiss, the judge ruling on the
5 motion to dismiss, perhaps the commencement of discovery
6 and depositions, those are three or four specific calls or
7 subjects that I can recall speaking to her about.

8 I'm pretty sure that on at least one or two
9 occasions, as we got further into the case, Mike and/or
10 Jan and I spoke to her together, or perhaps Casey, we all
11 spoke to her together about what was going on. And then
12 at some point, right around the mediation, she disappeared
13 and Mr. Wade showed up at the mediation.

14 Q Do you have any file notes or records of any of
15 these conversations you indicate you had with Ms. Zeller?

16 A I don't know. You have my file.

17 Q I haven't seen any, that's why I asked. I want
18 to make sure I'm not missing something.

19 A I'm not the best of note takers during phone
20 calls.

21 Q Aside from what you just told us about, is there
22 anything more particular you can recall about any of your
23 communications to Mrs. Zeller?

24 A No, that was pretty particular.

25 Q Can you recall any conversations with Ms. Zeller

1 following the Florida court's denial of the motion to
2 transfer?

3 A Yes. Following the court's denial of the motion
4 to transfer, I spoke with her and told her the court had
5 denied the transfer.

6 Q Do you recall any further conversations with her
7 following the denial of the motion to transfer?

8 A Yes. I can recall speaking with her and I
9 believe Mike may have been on the call and we discussed -
10 I believe we discussed the upcoming depositions and I
11 believe the issue of whether or not someone from St. Paul
12 was going to attend the Woods' depositions, but I don't
13 recall for sure. And the Woods' depositions were, I
14 believe, Jan of '05 -- I'm sorry -- '06.

15 Q Now, when you say the Woods' deposition; is that
16 the Tiger Woods' deposition?

17 A The Woodses' depositions were taken on
18 back-to-back days.

19 Q And who are you referring to as the witnesses
20 when you say the Woods' depositions?

21 A Same people you're referring to as the Woods
22 camp.

23 Q I want to be clear. Are you speaking about
24 Tiger Woods?

25 A Eldrick Tiger Woods, yes.

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1 Q His wife?

2 A Yes.

3 Q Anyone else?

4 A I'm not sure if there was a 30(b)(6) of the
5 corporation, and I'm pretty sure that Chris Hubman was not
6 deposed at the same time as Tiger Woods and his wife. I
7 believe we found a day when Tiger wasn't - was available
8 and his wife was available the next day. And Chris
9 Hubman, we deposed him, I want to say, a couple weeks
10 later. We deposed him closer to the mediation.

11 Q Now, in terms of those conversations you may
12 have had with Ms. Zeller and Mr. Wampold concerning the
13 start of the depositions and the Woods' depositions, do
14 you recall anything further about what was discussed
15 during the deposition?

16 MS. CARR: Objection to the form, argumentative.

17 THE WITNESS: Can you read that question back,
18 please?

19 (The pending question was read back by Madam
20 Reporter.)

21 BY MR. CARBIN:

22 Q Let's get to a new question. With respect to
23 the conversation you may have had with Ms. Zeller and with
24 Mr. Wampold, do you recall anything further about that
25 conversation?

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1 MS. CARR: Object to the form, argumentative.

2 THE WITNESS: No.

3 BY MR. CARBIN:

4 Q Do you recall any comments of Mrs. Zeller during
5 that conversation?

6 A I - I think she may have asked us to get back to
7 her when the dates were firmed up and she would let us
8 know if she or someone from St. Paul's could attend the
9 deposition of Tiger Woods and his wife, and perhaps
10 Privacy, Limited, whoever we were deposing for that.

11 Oh, and the captain's name was David Yowell, I
12 just remembered his name.

13 Q Do you recall any other conversations that
14 either Mr. Wampold or Mr. Peterson participated in with
15 you with St. Paul?

16 A With St. Paul, yes.

17 Q Okay. How many other conversations?

18 A Spent all of April 24th, 2006 having
19 conversations with Bruce Wade of St. Paul with Mr. Wampold
20 and Mr. Petersen.

21 Q Let's leave the mediation aside for our present
22 purposes.

23 A That wasn't your question, though, just so you
24 understand. I'm answering your question.

25 Q Aside from the conversation you had - you may

1 have had with Mrs. Zeller and Mr. Wampold that you've
2 described for us, do you recall any other conversations
3 you had with Ms. St. Paul -- excuse me -- with Mrs. Zeller
4 with either Mr. Wampold or Mr. Peterson presently? And
5 let's leave the mediation aside.

6 MS. CARR: Object to the form, argumentative.

7 THE WITNESS: Yes.

8 BY MR. CARBIN:

9 Q Okay. How many others of those conversations
10 did you have?

11 A Don't know.

12 Q Was it Mr. Wampold or Mr. Peterson, or both of
13 them on the same call, or were there different calls with
14 each of them?

15 A Could have been any of those. I have no
16 specific recollection.

17 I can recall a number of times, because Jan
18 Peterson spends his winters in Fort Lauderdale, that
19 getting Mike and Jan both on the phone, even though they
20 worked together, was a conference call. And I can
21 remember a couple times that we set up conference calls
22 where I would call the two of them or one of them would
23 call the two of us, and then we would try and reach Donna
24 Zeller to speak to her.

25 Q Do you recall the substance of any of those

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1 conversations where you got Mrs. Zeller on the line with
2 either Mr. Wampold or Mr. Peterson?

3 A The substance was the Tiger Woods' litigation.

4 Q I'm sorry?

5 A The substance was the Tiger Woods' litigation.

6 Q Do you recall anything more particular than
7 that, anything about the Tiger Woods' litigation?

8 A I cannot recall specifically what we talked
9 about at any specific conversation. But as I've already
10 testified, it was either to give her an update of
11 something that had happened or something that was going to
12 happen in litigation.

13 Q Can you give me any more particulars about what
14 you discussed with Mrs. Zeller during any of these calls,
15 aside from what you told us about already?

16 A Dates of depositions, upcoming deadline for
17 summary judgment motions, the mediation date. I believe
18 who the mediator was. I think we discussed - I'm pretty
19 sure that Ben Kuehne and I were the ones who settled on
20 Judge Scott as the mediator.

21 And at one point, I think there was a telephone
22 conversation, though it may have been a letter, an email
23 advising Donna that we had picked the mediator; what I
24 thought of the mediator and the requirement under our
25 local rules that an adjuster from St. Paul with full

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1 settlement authority had to show up at the mediation. So,
2 I needed to know that the date and the time were going to
3 work for her, because she was going to be traveling across
4 the country for the sole purpose of the mediation. And
5 I'm not sure if Mike or Jan were on that call, that may
6 have just been me.

7 Q You said you and Woods' local counsel picked a
8 mediator. Prior to selecting former Judge Scott as the
9 mediator, did you speak with St. Paul and secure their
10 agreement on Judge Scott as the mediator?

11 A That's kind of a tricky question, because we
12 actually didn't retain Judge Scott until about two days
13 before the mediation or maybe the week before. But we --
14 Ben and I had given the names to our respective
15 co-counsel, or in Ben's case, Baldridge was lead counsel.

16 Judge Scott was not the only name. We all
17 agreed on Judge Scott. And if I remember correctly, the
18 conversation I had with Donna about Judge Scott was giving
19 her my recommendation that he would be a good mediator for
20 the case because of the type of personality he has. The
21 unlikely - the unlikelihood that he would be swayed by the
22 fact that Tiger Woods was involved in the case, which was
23 a concern with our mediator selection. So I'm - she
24 was -- Before he was retained, she was aware that he was
25 our recommended choice.

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1 A You just told me you have my emails and you
2 haven't seen them, so I assume I didn't.

3 Q Did you get St. Paul's agreement to Ex-Judge
4 Scott as mediator before he was appointed?

5 A Did I, personally?

6 Q Yes.

7 A No.

8 Q Did anybody from your office, as far as you
9 know?

10 A They paid his bill.

11 Q Will you answer my question, please?

12 A I don't know.

13 Q Do you know if anybody from the Christensen camp
14 got St. Paul's agreement to Ex-Judge Scott as a mediator
15 before he was appointed?

16 A Nobody from Christensen's camp was ever told by
17 St. Paul that Judge Scott could not be our mediator.

18 Q Will you answer my question?

19 A I just did.

20 Q Do you know if anybody from the Christensen camp
21 secured St. Paul's agreement to the appointment of Former
22 Judge Scott as mediator?

23 A I would infer that Donna Zeller's silence on the
24 issue was her consent. She knew who we had picked and she
25 knew the mediation was going forward. She sent Bruce Wade

Foundation
speculation

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1 to the mediation with the knowledge that Judge Scott would
2 be the mediator. So, yes, I would say that we all secured
3 St. Paul's consent to the use of Judge Scott.

4 MR. CARBIN: Can I have that answer back?

5 (The answer was read back by Madam Reporter.)

6 BY MR. CARBIN:

7 Q Do you know if anybody from the Christensen camp
8 secured St. Paul's agreement before Former Judge Scott was
9 picked as a mediator?

10 MS. CARR: Objection, asked and answered.

11 THE WITNESS: Same answer I just gave you. Her
12 - her conduct implies that she consented, she sent
13 Bruce Wade. The mediation couldn't go forward if she
14 didn't send him, because we would be in violation of
15 the local rule. So if she didn't want us to use
16 Judge Scott, she could have withheld Bruce Wade from
17 the mediation.

18 BY MR. CARBIN:

19 Q Have you ever seen the insurance policy between
20 St. Paul and Christensen?

21 A I may have seen it when St. Paul filed the
22 lawsuit in Fort Lauderdale and violated the
23 confidentiality of the settlement agreement.

24 Q Prior to the filing of the declaratory judgement
25 action in Florida, had you seen the Christensen/St. Paul

objection
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401
402
403

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1 insurance policy?

2 A I don't think so.

3 Q Let's turn back to the fall of 2004, at about
4 the time your office was retained. Prior to filing an
5 answer or the motion to dismiss, was there some effort to
6 try to settle between Christensen and Woods?

7 A Yes.

8 MS. FOLEY: Intervenors designate all testimony
9 about settlement discussions as confidential.

10 BY MR. CARBIN:

11 Q Did you have any discussions with anybody from
12 the Woods' camp about settlement?

13 A Yes.

14 Q Who did you speak with?

15 A Doug Baldridge.

16 Q Who initiated that settlement dialogue?

17 A I don't think anyone initiated, we were speaking
18 after a deposition and -- no, I had my year wrong.

19 We're back when the lawsuit was first filed?

20 Q We're back in the fall of '04, correct.

21 A Yes. There were discussions right around -
22 well, there were discussions that I have knowledge of that
23 I did not participate in.

24 Q Okay.

25 A Right at that time.

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*Sp Paul expects
No Personal Knowledge*

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1 Q And what did you learn about settlement
2 discussions during that period?

3 A I learned that when the lawsuit was first filed,
4 Casey Marshall and Doug Baldrige spoke that one of the
5 reasons we agreed to enter into a consent preliminary
6 injunction, against the advice of Judge Zloch, was Casey
7 understood from Doug Baldrige that that would go a long
8 way to make the case go away; and that about three or four
9 weeks later, when I was -- I was involved in the
10 conversation with Casey, Doug and myself on the phone.

11 Q This is still '04?

12 A This is -- the preliminary injunction was
13 November 9th or 10th, '04. This is probably the week
14 after Thanksgiving '04, where Doug Baldrige raised the
15 payment of millions of dollars to Tiger Woods and we got
16 Doug Baldrige off the phone and Casey said, that's a
17 complete reversal from what he told me before the
18 preliminary injunction hearing. The main reason we
19 accepted the preliminary injunction was because it would
20 get us out of the case quickly.

21 There was talk of giving -- of extending the
22 Woods' warranty on the boat for the next year or two,
23 whatever that meant in terms of goodwill towards the
24 Woods, but never the payment of a seven figure settlement
25 amount. And at that point the settlement discussions

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1 basically broke down for - or didn't exist for another
2 year.

3 Q As far as you were aware of?

4 A As far as my involvement was concerned in - in
5 settlement talks.

6 Q Who was it that recommended against agreeing to
7 the preliminary injunction?

8 A Judge Zloch, the judge overseeing the case
9 questioned whether we were sure we really wanted to enter
10 into a consent preliminary injunction matter.

11 Q Did he give a reason why he questioned that?

12 A In my read of the transcript is, he didn't think
13 they had the strongest of cases.

14 Q They not having the strongest of cases being the
15 Woods camp?

16 A There was only one party that had the case at
17 the time of the preliminary injunction hearing.

18 Q With respect to the settlement dialogue, were
19 you aware of any proposal about a meeting in Florida?

20 MS. CARR: Objection, vague.

21 BY MR. CARBIN:

22 Q In the fall of '04.

23 A Between or among who?

24 Q Between the Woods camp and the Christensen camp.

25 A Yes. During the conversation, I believe Casey

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1 offered to have Joe Foggia fly to Florida and meet with,
2 probably, Chris Hubman to see if the matter could be
3 resolved. He - he offered to make Joe available for a
4 settlement meeting if - if - if Doug thought it would
5 further - it would help facilitate a settlement.

6 Q Who is Janet Moreira?

7 MS. CARR: Objection, asked and answered.

8 THE WITNESS: The same associate I identified as
9 having attended the preliminary injunction hearing
10 with Leslie Lott.

11 BY MR. CARBIN:

12 Q What was her role in the Woods/Christensen
13 litigation?

14 A She was my associate assisting me in the
15 defense.

16 Q The preliminary injunction, do I understand
17 correctly that that was entered on consent?

18 A Yes.

19 Q Did you have any communication with anybody from
20 St. Paul prior to it consenting to the entry of that
21 preliminary injunction, about the consent?

22 A Not personally. I wasn't - I wasn't around for
23 that.

24 Q Are you aware of anybody from your office that
25 discussed with St. Paul consenting to the entry of a

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1 preliminary injunction?

2 A I don't even know if St. Paul was involved at
3 that point in time.

4 Q Was that a no?

5 A It's an I don't know. My office didn't tender
6 the claim to St. Paul, I assume Casey Marshall did, and I
7 don't know when it was tendered. But the - I think the
8 papers were served the 4th or 5th of November, and the
9 hearing was like - it was like two or three days later.

10 Q Is it your understanding that Mr. Marshall was
11 the primary contact on behalf of Christensen with
12 St. Paul?

13 A I have no idea.

14 Q Was your office the primary contact with
15 St. Paul for Christensen?

16 A On the Woods' matter?

17 Q Yes.

18 A I don't believe so.

19 Q Did you have a conversation with Mr. Marshall
20 concerning the selection of your firm as defense counsel
21 for Christensen and having your firm approved by St. Paul?

22 A No. We already - we were hired and had already
23 appeared at the preliminary injunction hearing. By the
24 time I returned from getting married and my honeymoon, I
25 was aware that we were working on the case.

St. Paul, NY, New York
Marshall

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1 I got the initial call, I don't recall from
2 whom, on the golf course the day before my wedding and I -
3 I handed it off to my partner, Leslie Lott, who handled
4 the preliminary injunction hearing on our behalf. And
5 then when I returned from my honeymoon, I assumed the lead
6 within our firm on the matter. By that - by the time that
7 I came back from my honeymoon, we had been hired, St. Paul
8 had approved us as counsel, and we were working with Casey
9 and Joe on the defense of the matter.

10 Q That's what I wanted to talk about. The
11 approval of your firm by St. Paul, what was your
12 understanding of what that - why their approval was
13 needed?

14 MS. CARR: Object to the form.

15 THE WITNESS: I didn't have an understanding of
16 why the approval was needed. I had an understanding
17 that Christensen had submitted the lawsuit to
18 St. Paul for coverage and that St. Paul had approved
19 Lott & Friedland as defense counsel for Christensen
20 in the matter.

21 I - I don't practice insurance law. I know that
22 in the type of cases that my office works on, there
23 are situations where coverage is available. I know
24 that we always recommend to clients who get sued in
25 Lanham Act claims, L-A-N-H-A-M, to check their -

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1 Do you recognize this letter as one issued by
2 your office?

3 A Yes.

4 Q And what was the purpose of this letter, to your
5 understanding?

6 MS. CARR: Objection. The letter speaks for
7 itself.

8 THE WITNESS: As I just testified, when we have
9 Lanham Act claims come in our office that are for
10 clients who have been sued under the Lanham Act,
11 they're defendants in a Lanham Act case, we have a
12 standard form letter that we send to the client that
13 advises them of the possible availability of
14 insurance coverage under the advertising injury
15 clause of many general insurance policies. And this
16 was our office sending that letter to Christensen,
17 because a Lanham Act claim had been asserted against
18 Christensen and this is a standard letter we send out
19 in all such cases.

20 BY MR. CARBIN:

21 Q Did anyone from your office ever review the
22 policy issued by St. Paul for Christensen for coverage, as
23 far as you know?

24 A I know for a fact, we didn't.

25 Q Do you know if the policy issued by St. Paul to

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1 Christensen had any provision in it concerning a duty to
2 cooperate?

3 MS. CARR: Objection, foundation. He just
4 testified that nobody in his office reviewed the
5 document.

6 THE WITNESS: I've - I've -- other than
7 believing that the policy was attached as an exhibit
8 to the DJ action that your client filed against
9 Christensen in May of '06, I have never read the
10 policy.

11 BY MR. CARBIN:

12 Q Did you ever learn that the policy had any
13 provision in it that placed a cooperation obligation upon
14 Christensen?

15 MS. CARR: Object to the form.

16 THE WITNESS: Formally, no.

17 BY MR. CARBIN:

18 Q What does that mean, formally no?

19 A It's - it is my practice when insurance carriers
20 are involved in a client's matter to try and keep the
21 insurance carrier in the loop; is that formally abiding by
22 a cooperation clause, I don't know. Is that what we do,
23 either when we're asked by the client or based on our
24 practice and experience, yes.

25 So I didn't know, I never saw the policy, didn't

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1 know if it had a duty to cooperate clause that you
2 referred to. For I know that as a practice when there
3 are insurance companies involved, because they're, number
4 one, representing the client, number two, often times
5 paying our bills, that we work to keep them in the loop.

6 Q Did you understand that St. Paul was going to be
7 paying your bills for the defense of Christensen in the
8 Woods' litigation?

9 A No, not at first.

10 Q When did you learn that?

11 A When they started paying our bills which was, I
12 believe, about 15 months into the litigation.

13 Q When you say paying your bills, you mean paying
14 them directly to you?

15 A Correct.

16 Q Is it fair to say that all of your bills for the
17 defense of Christensen in the Woods' litigation have been
18 paid?

19 A Yes.

20 Q Now, we spoke about some awareness you had
21 concerning settlement discussions towards the beginning of
22 the case in 2004. After that period, did you have -- and
23 leaving the mediation aside -- did you have any
24 involvement in any settlement dialogue between the Woods
25 and Christensen's camps?

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1 A Yes.

2 Q When was that?

3 A In November '05.

4 Q What happened in November '05?

5 A Again, you're interrupting my answer.

6 Q I didn't mean to, you hesitated. I thought you
7 were done. I'm sorry.

8 A In November '05, we attended a third-party
9 deposition of Jill Bobrow in Vermont, and at the end of
10 the deposition, we were talking about all the upcoming
11 depositions. We, being Baldridge, Wampold and myself, in
12 the lobby of the hotel where the deposition was taken.

13 MS. CARR: Danielle, would you mind putting that
14 on mute?

15 MS. FOLEY: I'm sorry.

16 MS. CARR: Would you mind putting that on mute
17 so we can't hear you type?

18 MS. FOLEY: I'm sorry, I thought it was on mute.

19 THE WITNESS: Following the deposition in the
20 hotel - the deposition was taken in a hotel. Mike,
21 Doug and I were looking at calendars and scheduling
22 depositions and the issue of settlement came up. And
23 Mike or I or both of us said, find a time and a date
24 that Chris and Joe can meet. And, basically, it
25 tried to pick up from where we had left off when

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1 Casey and I spoke with Doug the prior year, basically
2 saying we'll extend the warranty, we'll make a public
3 statement, and we'll go from there. And Doug said
4 he'll take it back to his client, and we said we'd
5 take it back to our client, which really meant just
6 us getting Joe to agree to come to a meeting.

7 BY MR. CARBIN:

8 Q Joe Foggia?

9 A Yes, sir. And that was really the extent of it.
10 We were all, everyone was leaving to go to the airport to
11 get their flights, but we said we wanted to reopen the
12 possibility of settlement discussions.

13 MS. CARR: Again, Intervenors designate all
14 testimony about settlement discussions as
15 confidential.

16 BY MR. CARBIN:

17 Q And you mentioned Chris; would that be Chris
18 Hubman?

19 A Yes, it would.

20 Q Did you stay with Mr. Wampold and Mr. Baldrige
21 throughout that evening before you got on your flight?

22 MS. CARR: Objection, vague.

23 THE WITNESS: No. We went to the airport, I
24 think we went to the airport together and I think
25 they were -- I was flying home and they were flying

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1 on track here.

2 We were talking about the settlement discussion
3 you had with Mr. Baldridge and Mr. Wampold following the
4 deposition of Mr. Bobrow in Vermont, November of '05. Did
5 you report that discussion to St. Paul?

6 A Yes.

7 MS. CARR: Objection, asked and answered.

8 Sorry, please let me get the objection in.

9 BY MR. CARBIN:

10 Q Who did you report to at St. Paul?

11 A There is only one person I ever spoke to at
12 St. Paul outside of the mediation.

13 Q That was Mrs. Zeller?

14 MS. CARR: You need to give a verbal answer.

15 THE WITNESS: That wasn't a question, that was a
16 statement. That was Mrs. Zeller is not a question.
17 If he wants to say, was that Mr. Zeller, I'm happy to
18 answer the question. Since we can now play these
19 games, we'll play the games.

20 BY MR. CARBIN:

21 Q I'll adopt that question.

22 A Yes.

23 Q Do you recall what you told Mrs. Zeller?

24 A Verbatim, no.

25 Q What do you recall that you told Mrs. Zeller?

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1 A That we spoke, the attorneys spoke about the
2 clients meeting for settlement purposes.

3 Q Do you recall telling her anything else?

4 A Not specifically.

5 Q Did you make a note of that conversation with
6 Mrs. Zeller?

7 A Probably not.

8 Q Was there anybody else on the call aside from
9 you and Ms. Zeller?

10 A Unless you were listening, no.

11 THE WITNESS: I'm going to take a break now.

12 (A brief recess was taken.)

13 MR. CARBIN: Let's go back on.

14 BY MR. CARBIN:

15 Q Do you recall any response from Mrs. Zeller when
16 you spoke to her in the fall of '05 following this
17 discussion about settlement in Vermont?

18 A Nothing more specific than she asked me to keep
19 her updated and to let her know if the meeting ever
20 actually took place.

21 Q Did anything come of that discussion that you
22 had with Mr. Baldrige in Vermont, in terms of further
23 settlement dialogue?

24 A Case settled.

25 Q Well, I'm talking about the - you had a

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1 discussion, I think you said with Mr. Wampold and
2 Mr. Baldridge, in November of '05.

3 A And the case settled in April of '06.

4 Q Do I understand correctly from your comment that
5 there was a continuing dialogue from November of '05, up
6 until April of '06?

7 A Depends what you mean by continuing.

8 Q Well, some regular back and forth about the
9 potential to settle.

10 A I would say so. Joe Foggia attended the Woods'
11 depositions. I believe he and Chris Hubman spoke at that
12 time or it may have been at his own deposition, I don't
13 recall. But Chris Hubman was deposed in the same location
14 as Tiger Woods and his wife, which was Tiger's personal
15 offices in Orlando and Joe was present and he and Chris
16 spoke, he and Chris Hubman spoke at those depositions.
17 And then a month later, we mediated and settled.

18 Q When you say Chris and Joe Foggia spoke, was
19 that a personal meeting that they spoke at?

20 MS. CARR: Objection, form; vague.

21 THE WITNESS: As opposed to?

22 BY MR. CARBIN:

23 Q On the phone or teleconference.

24 A You mean was it in person?

25 Q Yes.

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1 Christensen?

2 A No.

3 Q Okay. How did you communicate with Christensen
4 about the progress of the case and how their exposure or
5 defenses were looking?

6 A Phone, email, in person, maybe fax, maybe
7 letter, pretty much any way that an attorney can
8 communicate with his client.

9 Q And were you communicating directly with
10 Mr. Foggia about the developments in the litigation and
11 your analysis of them?

12 A Not exclusively.

13 Q Following the denial of the motion to transfer
14 up until the time of the mediation, as best you can, how
15 frequently were you communicating with Christensen camp
16 about developments in the case and where you saw it going?

17 A I can't answer the question, because I don't
18 know what you mean by developments in the case and where I
19 saw it going.

20 I communicated with Casey Marshall, Joe Foggia,
21 others in Christensen's offices, probably pretty close to
22 daily during this litigation. It was not always about the
23 developments in the case or where I saw it going. It may
24 have been, I need to see a document. It may have been,
25 are you guys available on this time and date. It may have

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1 been, full-fledged strategy. But for a good four to six
2 month period, I would guess that in some form or another,
3 I spoke to somebody involved in this litigation on our
4 side eight out of every ten days, business days.

5 Q After the discussion you had with Mr. Wampold
6 and Mr. Baldridge in November of '05 concerning the
7 potential of settlement, and prior to the mediation, were
8 you involved in any further discussion about settlement?

9 MS. CARR: I am sorry. Could you just --

10 THE WITNESS: With whom?

11 MS. CARR: I was going to ask her to read it
12 back.

13 BY MR. CARBIN:

14 Q With the Woods camp.

15 A Yeah. I think every time I spoke to Doug
16 Baldridge, we said - he or I talked about the possibility
17 of getting the case settled one way or the other. Nothing
18 specific that I can recall but, is the meeting going to
19 happen between our clients. And obviously, every time I
20 spoke with Ben Kuehne or Doug about a mediator, I was
21 talking about settlement of the case.

22 But the - I - I would say that the lawyers
23 involved all understood that because of the issues
24 involved in the case, this was a case that primarily would
25 be settled by the clients reaching some sort of an

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1 understanding that would let them put it behind them. And
2 until we could set up a meeting, which wasn't going to be
3 Tiger Woods, but it was going to be Chris Hubman and Joe
4 Foggia or Dave Christensen, that the case wasn't going to
5 be settleable.

6 So, basically the sum and substance of my
7 discussions with Doug would have been, are we going to get
8 the clients together; when can we can get them together;
9 where can we get them together; things along of that
10 nature.

11 Q Was it important to get the clients together to
12 see if a settlement could be achieved because of
13 non-monetary concerns?

14 A The best --

15 MS. CARR: Objection, vague.

16 Go ahead.

17 MS. FOLEY: I'll just interrupt and designate
18 again all questions regarding settlement discussions
19 are confidential, including the previous two answers.

20 THE WITNESS: I would say because of the manner
21 in which the lawsuit arose, namely, Tiger Woods' wife
22 seeing what she thought were offensive uses of her
23 bedroom and her boat at the Fort Lauderdale Boat
24 Show, that the lawyers getting together and talking
25 about how to get the case settled wasn't going to

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1 satisfy Tiger Woods, necessarily - his wife,
2 definitely. And it was going to be important for
3 Mrs. Woods, personally and Tiger Woods, on behalf of
4 his wife, to hear some sort of a concession from
5 Christensen. Does that mean it's not monetary,
6 that's not for me to say.

7 For instance, giving them a two or three year
8 extension of their warranty, even though Christensen
9 is not writing a check, there is a monetary value to
10 that, because they're going to get free parts and
11 service on their boat for an extra two years or
12 whatever it may have been.

13 So, yeah, there is a monetary component to it,
14 but there was also a personal component to it because
15 of the nature of Mrs. Woods learning of the allegedly
16 offensive conduct and how she wanted to be - how it
17 was perceived that she wanted to be made whole.

18 BY MR. CARBIN:

19 Q And this personal character to any potential
20 resolution, is that something that was brought up by
21 Mr. Baldridge?

22 A In part.

23 Q Did Mr. Baldridge indicate that an apology would
24 be needed for resolution to figure out that?

25 MS. CARR: Objection, vague as to time frame.

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1 THE WITNESS: At some point in time, an apology
2 was brought into the mix.

3 I don't think the mediation was the first time I
4 recall hearing about an apology. But I don't think
5 an apology was brought up back in November of '04,
6 when Casey and I spoke with Doug Baldridge or,
7 necessarily, in November of '05, when Mike and I
8 spoke in person with Baldridge. But at some - at
9 some juncture, an apology came into the mix.

10 BY MR. CARBIN:

11 Q Okay. You say you don't think an apology was
12 raised in October '04. Do you recall with certainty one
13 way or the other, whether an apology was raised in October
14 '04?

15 A It wasn't October '04, because the lawsuit
16 wasn't even filed until November of '04. I said November,
17 you said October.

18 Q Excuse me. You're right, I misspoke.

19 Do you recall with any certainty whether an
20 apology was raised in the fall of '04 or not raised?

21 A I don't recall with certainty.

22 Q Do you recall about any degree of certainty,
23 whether the issue of an apology was raised in the fall of
24 2005 or not raised?

25 A During the discussions in Vermont?

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1 (Friedland Exhibit 152 was marked for
2 identification.)

3 BY MR. CARBIN:

4 Q Look at Exhibit Friedland 152, sir. Do you
5 recognize what these are?

6 MS. CARR: Obviously, take your time with it.

7 THE WITNESS: Is this the same document you just
8 showed me?

9 BY MR. CARBIN:

10 Q No, it isn't. I believe it's a different set of
11 notes.

12 A They're two pages of notes, appear to be written
13 by Leslie Lott dated November 17th of '04.

14 Q If you could draw your attention to the top of
15 the second page, and the second line there, I think it's a
16 bullet point, and if I am reading it correctly -- tell me
17 if you think I'm reading it wrong, you're more familiar
18 with this handwriting.

19 I believe it says, "Mutually agreed to cancel
20 settlement discussions." Do I appear to have read that
21 right?

22 A You mean, are you reading her handwriting
23 correctly?

24 Q Yes.

25 A Is that what you're asking me?

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1 Q Yes.

2 A It appears so.

3 Q Do you know what is referred to here, when it
4 speaks to mutually agreed to cancel settlement
5 discussions?

6 A Yes, because the line below says November 15th,
7 Baldrige said he will not meet without settlement
8 proposal, 1 million to \$20 million demand. Do you see
9 that?

10 Q And when it talks --

11 A Do you -- do you see that?

12 Q When it talks about mutually agreed, is that
13 mutual in reference to Christensen and Woods?

14 A The - on November 15th, Doug Baldrige, Casey
15 Marshall and I spoke on the phone about settlement, that
16 was the conversation I had referenced previously. Where
17 Casey was incensed because Doug had said if you consent to
18 the preliminary injunction, it will go a long way towards
19 getting the case settled.

20 On November 15th, the three of us got on the
21 phone and Doug said, we're not going to have a settlement
22 meeting unless we know for sure you're going to come up
23 with at least a seven figure settlement demand - proposal,
24 and Casey said, well, I guess we're not speaking - talking
25 settlement for a while.

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1 A Carol Williamson and Associates, which was a
2 defendant at the time, I believe.

3 Q Did you or anyone from your office ever speak to
4 St. Paul to get their agreement to enter into this
5 protective order before it was agreed to?

6 MS. CARR: Objection, foundation-less as to
7 those individuals from his office.

8 THE WITNESS: Probably not. This is not the
9 sort of - what I consider ministerial litigation
10 document that would require the insurance company's
11 input.

12 We were protecting confidential documents of the
13 parties, namely Tiger Woods, primarily, and
14 Christensen also; and the insurance company was not a
15 party to the action, it would have no need to protect
16 its proprietary information.

17 BY MR. CARBIN:

18 Q Were there any discussions amongst the
19 Christensen camp about whether or not this protective
20 order should be agreed to?

21 MS. CARR: Objection, form; overbroad; lack of
22 foundation with respect to the conversations he may
23 or may not - or he was not a part of.

24 THE WITNESS: He, including Casey Marshall and
25 the Christensen camp?

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1 A No.

2 Q I'm not giving you a headache, am I?

3 A Uh-huh. Yes, you are.

4 Q Look, if you would, at what is marked Friedland
5 Exhibit 154. Do you recognize what this is?

6 A Janet Moreira's handwritten notes of a telephone
7 conference of November 22nd, '04, at 6:15 p.m. with you.

8 Q And obviously, it refers to the fact that I
9 identified myself as coverage counsel for St. Paul; do you
10 see that?

11 A It says coverage counsel for St. Paul. She may
12 have done some research and found out, but I'll give you
13 the benefit of the doubt that you identified yourself as
14 coverage counsel. You don't want me assuming.

15 Q No, I don't. I don't know how else she would
16 have known.

17 A She could have Googled you.

18 Q I'm sure you did.

19 Dropping down to the last line, it says: He
20 wants to get copies of pleadings; do you see that?

21 A Yes.

22 Q Do you know if the pleadings were ever sent to -
23 any pleadings were ever sent from your office to me?

24 A Since you asked - asked the question, I'll say
25 no, I don't know.

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1 say, your office had not sent my office any pleadings,
2 would you have any basis to dispute that?

3 A I'll bite my tongue and say, no.

4 MS. CARR: Also objection to foundation. He
5 says he doesn't know whether they sent the pleadings,
6 he certainly can't say one way or the other whether
7 he could object to Mr. Carbin's statement or not.

8 (Friedland Exhibit 155 was marked for
9 identification.)

10 BY MR. CARBIN:

11 Q Mr. Friedland, look at what we've marked as
12 Exhibit Friedland 155, if you would. Do you recognize
13 what this is?

14 A Yes, sir.

15 Q And what is it?

16 A Notes of a telephone conversation that Janet and
17 I had with Casey Marshall on the 24th of November, 2004.

18 Q And am I reading that as 10:48 a.m.?

19 A I'd say 10:18, but not sure.

20 Q And did the subject of settlement come up during
21 that conversation?

22 A It appears to have.

23 Q All right. And did Mr. Marshall indicate that
24 he was still talking to Mr. Baldridge about settlement at
25 this time?

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1 A Sir, you can read this a sentence at a time. I
2 already said this is my email.

3 Q Prior to this email of February 1, 2005, when is
4 the last time you had any discussion directly with
5 Ms. Zeller?

6 A You want me to guess?

7 Q No, please don't guess.

8 A I can give you an answer based on activity in
9 the case.

10 Q If you have a memory, that's fine.

11 A It was around the same time that we filed our
12 motion to dismiss and the Seattle firm was hired to handle
13 the declaratory judgment action in Vancouver, Washington.

14 Q And if I recall correctly, that would have been
15 in the fall of '04; is that right?

16 A No. That would have been December, sometime in
17 December of '04, so probably within -- this is
18 February 1st, within three to five weeks of the date of
19 this email exchange.

20 Q Looking at this email of yours, February 1,
21 2005, 11/17, you write: "I don't think an insurance
22 company should have any role whatsoever in deciding
23 litigation strategy for our client..." the sentence
24 continues, but I want to stick with that language.

25 A Then you're reading the sentence out of context.

1 Q Why was it your view that an insurance company
2 should not have any role whatsoever in deciding litigation
3 strategy for a client?

4 A It wasn't my view. It was my opinion.

5 Q Why did you have that opinion?

6 A Because my client was Christensen. Casey
7 Marshall was the outside general counselor at Christensen,
8 and I was expressing to him that I thought Christensen and
9 its lawyers should be making the decisions, and then I
10 added to that sentence, but let me know if you feel
11 otherwise. So, if he had knowledge of requirements under
12 the insurance policy that would give St. Paul the right to
13 tell me what to do or how to do it, he should let me know.

14 Q Is it still your opinion that an insurance
15 company should not have a role in deciding litigation
16 strategy for a client?

17 A I don't know. I haven't been faced with that
18 opinion - with that issue.

19 Q When did you develop that opinion?

20 A I don't know.

21 Q Did you develop that opinion before you wrote
22 this February 1, 2005 email?

23 A It would be hard to express an opinion in
24 writing before it had been developed, so obviously.

25 Q What is the basis of your opinion that an

1 insurance company should not have a role whatsoever in
2 deciding litigation strategy for a client?

3 MS. CARR: Object to the form.

4 THE WITNESS: I don't know if there is a basis.

5 I'm a patent and trademark lawyer, not an
6 insurance lawyer. I was giving my two cents for
7 whatever they were worth.

8 BY MR. CARBIN:

9 Q What would the downside of an insurance company
10 being involved in deciding litigation strategy for a
11 client be?

12 MS. CARR: Objection, foundation.

13 THE WITNESS: I don't know. I don't know,
14 that's what you do --

15 MS. CARR: Calls for speculation.

16 THE WITNESS: Sorry.
17 That's what you do for a living, not what I do
18 for a living. You would know that better than I.

19 BY MR. CARBIN:

20 Q You think that an insurance company should not
21 have a role in deciding litigation strategy for a client,
22 even where the insurance company is paying for the legal
23 defense?

24 A I don't believe that the fact that you're -- I'm
25 sorry.

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1 MS. CARR: I was just thinking. You just asked
2 what he thinks. Go ahead, please.

3 THE WITNESS: I don't think the fact that the
4 insurance company may be paying for a legal defense
5 gives the right for the insurance company to dictate
6 the strategy.

7 BY MR. CARBIN:

8 Q Does it give the insurance company a right, in
9 your opinion, to be involved in deciding what the strategy
10 should be?

11 A No.

12 Q Do you think that the fact that the insurance
13 company is paying for the defense and paying the legal
14 fees of your firm creates any obligation and
15 responsibility on your firm's part in terms of reporting
16 to the insurance company?

17 MS. CARR: Objection, vague.

18 THE WITNESS: Only to the extent that my client,
19 who is my responsibility legally and ethically,
20 desires that I do so.

21 BY MR. CARBIN:

22 Q So is it fair to say that whatever reporting you
23 would do to the insurance company in this case, St. Paul,
24 would be predicated upon instructions you got from your
25 client?